

Adopted	Rejected
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COMMITTEE REPORT

YES:	9
NO:	0

MR. SPEAKER:

Your Committee on **Elections and Apportionment**, to which was referred House
Bill 1196, has had the same under consideration and begs leave to report the same back to the
House with the recommendation that said bill **be amended** as follows:

- 1 Page 2, between lines 15 and 16, begin a new paragraph and insert:
- 2 "SECTION 2. IC 3-5-2-40.6 IS AMENDED TO READ AS
- 3 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 40.6. "Provisional
- 4 ballot" refers to a ballot cast in accordance with the provisions of
- 5 IC 3-11.7. **The term includes an absentee ballot required to be**
- 6 **treated as a provisional ballot under this title."**
- 7 Page 2, between lines 23 and 24, begin a new paragraph and insert:
- 8 "SECTION 4. IC 3-7-12-19 IS AMENDED TO READ AS
- 9 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. **(a) Subject to**
- 10 **subsection (c)**, a board of registration may employ all necessary
- 11 assistants.
- 12 **(b)** The number of employees shall be divided equally between the
- 13 major political parties of the county.
- 14 **(c) A person who is:**
- 15 **(1) on probation;**
- 16 **(2) on parole;**

- (3) subject to home detention under IC 35-38-2.5;
- (4) placed in a community corrections program under IC 35-38-2.6;
- (5) in a community transition program under IC 11-10-11.5;
- (6) participating in a postconviction forensic diversion program under IC 11-12-3.7;
- (7) being supervised by a reentry court;
- (8) serving a sentence in a minimum security assignment under IC 35-38-3-6; or
- (9) serving an intermittent sentence;

may not be an employee of, or otherwise perform work for, a board of registration."

Page 12, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 16. IC 3-11-10-17, AS AMENDED BY P.L.198-2005, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 17. (a) If the inspector finds under section 15 of this chapter that any of the following applies, ~~a the inspector shall direct that the absentee ballot may not be accepted or counted;~~ **processed as a provisional ballot under IC 3-11.7:**

(1) The affidavit is insufficient or the ballot has not been endorsed with the initials of:

(A) the two (2) members of the absentee voter board in the office of the circuit court clerk under IC 3-11-4-19 or section 27 of this chapter;

(B) the two (2) members of the absentee voter board visiting the voter under section 25(b) of the chapter; or

(C) the two (2) appointed members of the county election board or their designated representatives under IC 3-11-4-19.

(2) A copy of the voter's signature has been furnished to the precinct election board and that the signatures do not correspond or there is no signature.

(3) The absentee voter is not a qualified voter in the precinct.

(4) The absentee voter has voted in person at the election.

(5) The absentee voter has not registered.

(6) The ballot is open or has been opened and resealed. This subdivision does not permit an absentee ballot transmitted by fax or electronic mail under IC 3-11-4-6 to be rejected because the ballot was sealed in the absentee ballot envelope by the individual

designated by the circuit court to receive absentee ballots transmitted by fax or electronic mail.

(7) The ballot envelope contains more than one (1) ballot of any kind for the same office or public question.

(8) In case of a primary election, if the absentee voter has not previously voted, the voter failed to execute the proper declaration relative to age and qualifications and the political party with which the voter intends to affiliate.

(9) The ballot has been challenged and not supported.

(b) Subsection (c) applies whenever a voter with a disability is unable to make a signature:

(1) on an absentee ballot application that corresponds to the voter's signature in the records of the county voter registration office; or

(2) on an absentee ballot secrecy envelope that corresponds with the voter's signature:

(A) in the records of the county voter registration office; or

(B) on the absentee ballot application.

(c) The voter may request that the voter's signature or mark be attested to by:

(1) the absentee voter board under section 25(b) of this chapter;

(2) a member of the voter's household; or

(3) an individual serving as attorney in fact for the voter.

(d) An attestation under subsection (c) provides an adequate basis for an inspector to determine that a signature or mark complies with subsection (a)(2).

SECTION 17. IC 3-11-10-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 18. ~~Each (a) An~~ **absentee** ballot not accepted or counted for any of the reasons prescribed by section 17 of this chapter shall, without being unfolded to disclose how it is marked, be **replaced in the absentee ballot envelope in which the ballot was contained. The absentee ballot envelope shall be securely sealed and** endorsed with the words: "Rejected (giving the reason or reasons ~~therefor~~) **for the rejection**".

(b) All rejected absentee ballots shall be enclosed and securely sealed in an envelope on which the inspector shall write the words: ~~"Defective"~~ **"Absentee ballots to be processed as provisional ballots"**. The inspector shall also identify the precinct and the date of the

election on the envelope containing the rejected ballots. ~~The defective absentee ballots shall be returned to the same officer and in the same manner as prescribed by this title for the return and preservation of official ballots cast and uncast at the election.~~"

Page 17, between lines 12 and 13, begin a new paragraph and insert:

"SECTION 21. IC 3-11-10-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 34. If ~~an envelope containing~~ an absentee ballot has been marked ~~"Rejected as defective"~~ **rejected under section 17 of this chapter** and the voter appears in person at the precinct before the polls close, the voter may vote as any other voter voting in person. **A notation shall be made on the absentee ballot envelope of the rejected absentee ballot that the voter appeared at the polls.**"

Page 17, delete lines 13 through 33, begin a new paragraph and insert:

"SECTION 22. IC 3-11.5-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. To the extent that they are in conflict with this article, the following statutes do not apply to a county that has adopted a resolution described by section 1 of this chapter:

- (1) IC 3-11-4-22.
- (2) IC 3-11-10-1.5.
- (3) IC 3-11-10-3.
- (4) IC 3-11-10-5.
- (5) IC 3-11-10-6.
- (6) IC 3-11-10-7.
- (7) IC 3-11-10-8.
- (8) IC 3-11-10-9.
- (9) IC 3-11-10-11.
- (10) IC 3-11-10-12.
- (11) IC 3-11-10-13.
- (12) IC 3-11-10-14.
- (13) IC 3-11-10-15.
- (14) IC 3-11-10-16.
- (15) IC 3-11-10-17.
- (16) IC 3-11-10-18.
- (17) IC 3-11-10-20.
- (18) IC 3-11-10-21.

- 1 (19) IC 3-11-10-22.
- 2 (20) IC 3-11-10-23.
- 3 (21) IC 3-11-10-31.
- 4 (22) IC 3-11-10-32.
- 5 (23) IC 3-11-10-33.
- 6 (24) IC 3-11-10-34.
- 7 ~~(25) IC 3-11-10-35.~~
- 8 ~~(26)~~ (25) IC 3-11-10-36.
- 9 ~~(27)~~ (26) IC 3-11-10-37.
- 10 ~~(28)~~ (27) IC 3-12-2.
- 11 ~~(29)~~ (28) IC 3-12-3-12.".

12 Page 18, between lines 9 and 10, begin a new paragraph and insert:

13 "SECTION 25. IC 3-11.5-4-13, AS AMENDED BY P.L.198-2005,
 14 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2008]: Sec. 13. (a) If the absentee ballot counters find under
 16 section 11 of this chapter that any of the following applies, the ballots
 17 shall be ~~rejected~~ **processed as provisional ballots under IC 3-11.7:**

18 (1) The affidavit is insufficient or that the ballot has not been
 19 endorsed with the initials of:

20 (A) the two (2) members of the absentee voter board in the
 21 office of the clerk of the circuit court under IC 3-11-4-19 or
 22 IC 3-11-10-27;

23 (B) the two (2) members of the absentee voter board visiting
 24 the voter under IC 3-11-10-25; or

25 (C) the two (2) appointed members of the county election
 26 board or their designated representatives under IC 3-11-4-19.

27 (2) The signatures do not correspond or there is no signature.

28 (3) The absentee voter is not a qualified voter in the precinct.

29 (4) The absentee voter has voted in person at the election.

30 (5) The absentee voter has not registered.

31 (6) The ballot is open or has been opened and resealed. This
 32 subdivision does not permit an absentee ballot transmitted by fax
 33 or electronic mail under IC 3-11-4-6 to be rejected because the
 34 ballot was sealed in the absentee ballot envelope by the individual
 35 designated by the circuit court to receive absentee ballots
 36 transmitted by fax or electronic mail.

37 (7) The ballot envelope contains more than one (1) ballot of any
 38 kind for the same office or public question.

(8) In case of a primary election, if the absentee voter has not previously voted, the voter failed to execute the proper declaration relative to age and qualifications and the political party with which the voter intends to affiliate.

(9) The ballot has been challenged and not supported.

(b) Subsection (c) applies whenever a voter with a disability is unable to make a signature:

(1) on an absentee ballot application that corresponds to the voter's signature in the records of the county voter registration office; or

(2) on an absentee ballot security envelope that corresponds with the voter's signature:

(A) in the records of the county voter registration office; or

(B) on the absentee ballot application.

(c) The voter may request that the voter's signature or mark be attested to by any of the following:

(1) The absentee voter board under section 22 of this chapter.

(2) A member of the voter's household.

(3) An individual serving as attorney in fact for the voter.

(d) An attestation under subsection (c) provides an adequate basis for the absentee ballot counters to determine that a signature or mark complies with subsection (a)(2).

(e) If the absentee ballot counters are unable to agree on a finding described under this section or section 12 of this chapter, the county election board shall make the finding.

(f) The absentee ballot counters or county election board shall issue a certificate to a voter whose ballot has been rejected under this section if the voter appears in person before the board not later than 5 p.m. on election day. The certificate must state that the voter's absentee ballot has been rejected and that the voter may vote in person under section 21 of this chapter if otherwise qualified to vote.

SECTION 26. IC 3-11.5-4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. (a) ~~Each An~~ **absentee** ballot rejected for any of the reasons prescribed by section 13 of this chapter shall, without being unfolded to disclose how the ballot is marked, be **replaced in the absentee ballot envelope in which the ballot was contained. The absentee ballot envelope shall be securely sealed and** endorsed with the words: "Rejected (giving the reason or

1 reasons for the rejection)".

2 (b) All rejected absentee ballots shall be enclosed and securely
3 sealed in an envelope on which the absentee ballot counters shall write
4 the words: **"Rejected" Absentee ballots to be processed as provisional**
5 **ballots"**. The absentee ballot counters shall also identify the precinct
6 and the date of the election on the envelope containing the rejected
7 ballots.

8 (c) ~~The rejected absentee ballots shall be returned to the same~~
9 ~~officer and in the same manner as prescribed by this title for the return~~
10 ~~and preservation of official ballots cast and uncast at the election.~~

11 SECTION 27. IC 3-11.5-4-21 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 21. If ~~an envelope~~
13 ~~containing~~ an absentee ballot has been ~~marked "Rejected"~~ **rejected**
14 **under section 14 of this chapter** and the voter appears in person at the
15 precinct before the polls close, the voter may vote as any other voter
16 voting in person if the voter presents the precinct election board with
17 the certificate issued under section 13(c) of this chapter. **A notation**
18 **shall be made on the absentee ballot envelope of the rejected**
19 **absentee ballot that the voter appeared at the polls.**

20 SECTION 28. IC 3-11.7-2-1, AS AMENDED BY P.L.164-2006,
21 SECTION 121, IS AMENDED TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) ~~As provided by 42 U.S.C.~~
23 ~~15482,~~ This section applies to the following individuals:

- 24 (1) An individual:
- 25 (A) whose name does not appear on the registration list; and
 - 26 (B) who is challenged under IC 3-10-1 or IC 3-11-8 after the
 - 27 voter makes an oral or a written affirmation under IC 3-7-48-5
 - 28 or IC 3-7-48-7 or after the voter produces a certificate of error
 - 29 under IC 3-7-48-1.
- 30 (2) An individual described by IC 3-10-1-10.5, IC 3-11-8-23.5, or
- 31 IC 3-11-8-27.5 who is challenged as not eligible to vote.
- 32 (3) An individual who seeks to vote in an election as a result of a
- 33 court order (or any other order) extending the time established for
- 34 closing the polls under IC 3-11-8-8.
- 35 **(4) An individual whose absentee ballot has been rejected**
- 36 **under IC 3-11-10-17 or IC 3-11.5-4-13.**

37 (b) As required by 42 U.S.C. 15483, a voter who has registered to
38 vote but has not:

(1) presented identification required under 42 U.S.C. 15483 to the poll clerk before voting in person under IC 3-11-8-25.1; or

(2) filed a copy of the identification required under 42 U.S.C. 15483 to the county voter registration office before the voter's absentee ballot is cast;

is entitled to vote a provisional ballot under this article.

(c) A precinct election officer shall inform an individual described by subsection (a)(1) or (a)(2) that the individual may cast a provisional ballot if the individual:

(1) is eligible to vote under IC 3-7-13-1;

(2) submitted a voter registration application during the registration period described by IC 3-7-13-10 (or IC 3-7-36-11, if the voter registered under that section); and

(3) executes an affidavit described in IC 3-10-1-9 or IC 3-11-8-23.

(d) A precinct election officer shall inform an individual described by subsection (a)(3) that the individual may cast a provisional ballot.

(e) An absentee ballot rejected under IC 3-11-10-17 or IC 3-11.5-4-13 shall be treated as a provisional ballot under this article. The county election board shall send a notice to the voter at the address indicated on the voter's absentee ballot application giving the following information:

(1) That the voter's absentee ballot was rejected.

(2) The reasons for rejection of the voter's absentee ballot.

(3) That the voter's absentee ballot will be treated as a provisional ballot.

(4) That the county election board will have a meeting to determine whether provisional ballots shall be counted.

(5) The date, time, and place of the meeting described in subdivision (4).

(6) That the voter will be given an opportunity to support the validity of the absentee ballot.

(7) That the county election board may limit the voter's presentation. The county election board must grant a voter at least five (5) minutes to make a presentation.

SECTION 29. IC 3-11.7-5-1, AS AMENDED BY P.L.164-2006, SECTION 122, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. (a) After the close of the polls, provisional ballots shall be counted as provided in this chapter.

(b) Notwithstanding IC 3-5-4-1.5 and any legal holiday observed under IC 1-1-9, all provisional ballots must be counted by not later than noon ten (10) days following the election.

(c) The county election board shall meet before noon on the date described in subsection (b) to do the following:

(1) Provide voters who have cast provisional ballots an opportunity to make a presentation in support of the validity of the provisional ballot.

(2) Determine which provisional ballots shall be counted.

SECTION 30. IC 3-11.7-5-2, AS AMENDED BY P.L.103-2005, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. (a) ~~Except as provided in section 5 of this chapter,~~ If the county election board determines that all the following apply, a provisional ballot is valid and shall be counted under this chapter:

(1) The affidavit executed by the provisional voter under IC 3-11.7-2-1 is properly executed.

(2) The provisional voter is a qualified voter of the precinct and has provided proof of identification, if required, under IC 3-10-1, IC 3-11-8, or IC 3-11-10-26.

(3) Based on all the information available to the county election board, including:

(A) information provided by the provisional voter;

(B) information contained in the county's voter registration records; and

(C) information contained in the statewide voter registration file;

the provisional voter registered to vote at a registration agency under this article on a date within the registration period.

(b) If the provisional voter has provided information regarding the registration agency where the provisional voter registered to vote, the board shall promptly make an inquiry to the agency regarding the alleged registration. The agency shall respond to the board not later than noon of the first Friday after the election, indicating whether the agency's records contain any information regarding the registration. If the agency does not respond to the board's inquiry, or if the agency responds that the agency has no record of the alleged registration, the board shall reject the provisional ballot **unless:**

1 **(1) the voter appears at the meeting held under section 1 of**
 2 **this chapter; and**

3 **(2) the board determines, based on the voter's presentation,**
 4 **that the voter was validly registered.**

5 **If the board determines that the voter was not properly registered,**
 6 the board shall endorse the ballot with the word "Rejected" and
 7 document on the ballot the inquiry and response, if any, by the agency.

8 (c) ~~Except as provided in section 5 of this chapter,~~ A provisional
 9 ballot cast by a voter described in IC 3-11.7-2-1(b) is valid and shall be
 10 counted if the county election board determines under this article that
 11 the voter filed the documentation required under IC 3-7-33-4.5 and 42
 12 U.S.C. 15483 with the county voter registration office not later than the
 13 closing of the polls on election day."

14 Page 18, delete lines 10 through 42, begin a new paragraph and
 15 insert:

16 "SECTION 31. IC 3-11.7-5-2.5, AS ADDED BY P.L.103-2005,
 17 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JULY 1, 2008]: Sec. 2.5. (a) A voter who:

19 (1) was challenged under IC 3-10-1, IC 3-11-8, or IC 3-11-10-26
 20 as a result of the voter's inability or declination to provide proof
 21 of identification; and

22 (2) cast a provisional ballot;

23 may personally appear ~~before the circuit court clerk or the~~ **at the**
 24 county election board ~~not later than the deadline specified by~~ **held**
 25 **under** section 1 of this chapter for the county election board to
 26 determine whether to count a provisional ballot. **The voter may also**
 27 **appear before the circuit court clerk before the county election**
 28 **board meeting to provide proof of identification and execute the**
 29 **affidavit as required under subsection (b).**

30 (b) Except as provided in subsection (c), ~~or (c);~~ if the voter:

31 (1) provides proof of identification to the circuit court clerk or
 32 county election board; and

33 (2) executes an affidavit before the clerk or board, in the form
 34 prescribed by the commission, affirming under the penalties of
 35 perjury that the voter is the same individual who:

36 (A) personally appeared before the precinct election board;
 37 and

38 (B) cast the provisional ballot on election day;

the county election board shall find that the voter's provisional ballot is valid and direct that the provisional ballot be opened under section 4 of this chapter and processed in accordance with this chapter.

(c) If the voter executes an affidavit before the circuit court clerk or county election board, in the form prescribed by the commission, affirming under the penalties of perjury that:

(1) the voter is the same individual who:

(A) personally appeared before the precinct election board;

and

(B) cast the provisional ballot on election day; and

(2) the voter:

(A) is:

(i) indigent; and

(ii) unable to obtain proof of identification without the payment of a fee; or

(B) has a religious objection to being photographed;

the county election board shall determine whether the voter has been challenged for any reason other than the voter's inability or declination to present proof of identification to the precinct election board:

(d) If the county election board determines that the voter described in subsection (c) has been challenged solely for the inability or declination of the voter to provide proof of identification, the county election board shall:

(1) find that the voter's provisional ballot is valid; and

(2) direct that the provisional ballot be:

(A) opened under section 4 of this chapter; and

(B) processed in accordance with this chapter.

(e) If the county election board determines that a voter described in subsection (b) or (c) has been challenged for a cause other than the voter's inability or declination to provide proof of identification, the board shall:

(1) note on the envelope containing the provisional ballot that the voter has complied with the proof of identification requirement; and

(2) proceed to determine the validity of the remaining challenges set forth in the challenge affidavit before ruling on the validity of the voter's provisional ballot.

(f) If a voter described by subsection (a) fails by the deadline for

counting provisional ballots referenced in subsection (a) described in section 1 of this chapter to:

- (1) appear before the county election board **or the circuit court clerk**; and
- (2) execute an affidavit in the manner prescribed by subsection (b); ~~or (c)~~;

the county election board shall find that the voter's provisional ballot is invalid.

SECTION 32. IC 3-11.7-5-3, AS AMENDED BY P.L.103-2005, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) **This section applies** if the board determines **any of the following**:

- (1) That the affidavit executed by the provisional voter has not been properly executed.
- (2) That the provisional voter is not a qualified voter of the precinct.
- (3) That the **provisional** voter failed to provide proof of identification when required under IC 3-10-1, IC 3-11-8, or IC 3-11-10-26. ~~or~~
- (4) That the provisional voter did not register to vote at a registration agency under this article on a date within the registration period.
- (5) **That the provisional voter's absentee ballot is not entitled to be counted under this title.**

(b) The board shall make the following findings:

- (1) The provisional ballot is invalid.
- (2) The provisional ballot may not be counted.
- (3) The provisional ballot envelope containing the ballots cast by the provisional voter may not be opened.

~~(b)~~ (c) If the county election board determines that a provisional ballot is invalid, a notation shall be made on the provisional ballot envelope: "Provisional ballot determined invalid".

SECTION 33. IC 3-11.7-5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 19. As soon as the ballots have been counted, the counters shall do the following in the presence of the county election board:

- (1) Place in a strong paper envelope or bag the following:
 - (A) All provisional ballots, voted and spoiled.

- 1 (B) All provisional ballots
- 2 (i) determined invalid under section 3 of this chapter. ~~or~~
- 3 (ii) ~~rejected under section 5 of this chapter.~~
- 4 (C) All protested and uncounted provisional ballots.
- 5 (D) All provisional ballot envelopes.
- 6 (E) All executed affidavits relating to the provisional ballots.
- 7 (F) The tally papers.
- 8 (2) Securely seal the envelope or bag.
- 9 (3) Have both counters initial the envelope or bag.
- 10 (4) Plainly mark on the outside of the envelope or bag in ink the
- 11 precinct in which the provisional ballots were cast.
- 12 (5) Deliver the envelope or bag to the circuit court clerk.
- 13 (6) Notify the circuit court clerk of the number of ballots placed
- 14 in the envelope or bag."
- 15 Page 19, delete lines 1 through 31.
- 16 Page 19, line 36, delete "December" and insert "**January**".
- 17 Page 19, line 36, delete "of" and insert "**following**".
- 18 Page 19, line 38, delete "during" and insert "**for**".
- 19 Page 20, line 37, strike "Except as provided in section 13 of this
- 20 chapter,".
- 21 Page 20, line 37, delete "a" and insert "A".
- 22 Page 24, between lines 32 and 33, begin a new paragraph and insert:
- 23 "SECTION 43. THE FOLLOWING ARE REPEALED
- 24 [EFFECTIVE JULY 1, 2008]: IC 3-11-10-35; IC 3-11.7-5-5.".
- 25 Renumber all SECTIONS consecutively.
- (Reference is to HB 1196 as introduced.)

and when so amended that said bill do pass.

Representative Pierce